IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Arbitration Petition No. 350 of 2007

JCL International Limited ..Petitioners

vs.

1. The Director Marketing
Bharat Petroleum Corporation
and others ..Respondents

Mr.U.L.Shah for petitioners.
Ms.Sheela John i/b M/s M.P.Savla and Co. for respondent no.3.

CORAM: S.C.DHARMADHIKARI J
22nd October,2007

P.C.

1. The only contention raised before me by the learned Counsel appearing for the petitioners is that this Court in Arbitration Petition No.367 of 2006 which was filed under section 34 of the Arbitration and Conciliation Act, 1996 passed the order on 9th October, 2006. It sets aside the Award made by respondent no.2 who is Arbitrator appointed to adjudicate upon the disputes between the parties. The Award made earlier is dated 27th April, 2006. That is set aside by the order dated 9th October, 2006. The contention, therefore, is that the matter goes back to the Arbitral Tribunal. However, once this Court sets aside the award and

the matter goes back for adjudication afresh, the same Arbitrator cannot enter upon the reference and adjudicate upon the disputes between the parties.

2. My attention is invited to section 15 of the Arbitration and Conciliation Act, 1996 and reliance is also placed on a decision of this Court so also the decision of the learned single Judge of Delhi High Court.

3. There is no merit in this contention. Admittedly, the award was made by the Arbitrator which was challenged in a petition under sec.34 of Arbitration and Conciliation Act, 1996. A perusal of the order passed by this Court would reveal that the award was challenged on the ground that the Arbitrator has failed to consider the claims which were referred to him. Further, his Award is vitiated because he failed to assign any reasons as to why he found the price fixed by order dated 30th July, 1999 to be provisional and not final. The relevant issue before the Arbitrator was not gone into in the opinion of this Court and the finding thereon is vitiated by total non application of mind. The award was, therefore, found to be suffering from infirmity and liable to be set

aside.

4. It is pertinent to note that although the petition was filed under section 11(6) read with section 14(1)(a) of the Act alleging illegal extension sought by the Arbitrator. Neither the said petition is pressed nor are there any orders made by this Court thereon. The only order which is passed by this Court is on the petition challenging the award made earlier. This Court while setting aside the award did not give any directions regarding the manner in which the reference must proceed.

5. In such a case section 15 can have no application. On a bare perusal of section 15 it is apparent that the same comes into play when the circumstances in addition to sections 13 or 14 of the Act are pointed out. Section 13 sets out the challenge to the procedure i.e. procedure for challenging the arbitrator. Any finding rendered on such a challenge or if it is turned down or allowed, then consequences that follow are also provided. Section 14 deals with failure or impossibility of the Arbitrator to act. Therefore, the mandate terminates. Termination of mandate and

substitution of the Arbitrator for circumstances, in addition to sections 13 or 14, is covered by section 15. Mandate is terminated where the Arbitrator withdraws from the office for any reason or by or pursuant to the agreement between parties. It is on such occasion that the mandate terminates if the Court is satisfied that it should substitute Arbitrator because of the reasons set out above. Then a substituted Arbitrator is to be appointed according to rules that would be applicable for appointment of the Arbitrator.

6. Before me such a situation has admittedly not arisen. It is nobody's case that in addition to circumstances set out in sections 13 and 14, the mandate was liable to be terminated and that is how the order passed by this Court proceeds. On the other hand, on the own showing of the petitioners, the findings on merits in the earlier award were assailed under sec.34 of the Act. That award was set aside. This Court permitted the reference to proceed. It gave no directions with regard to continuation or termination of the second respondent as Arbitrator. In such circumstances and when section 15 has no application in the facts and circumstances of the present case that I am not

inclined to accede to the submission that respondent no.2 should not continue as an Arbitrator. The second respondent's mandate has not been terminated. The learned Counsel was unable to show anything by which the said mandate would come to an end,. In such circumstances, the petition is devoid of any merits and is liable to be dismissed. The same is accordingly dismissed.

7. The decisions relied upon have been rendered in the peculiar facts of the case and when there was an issue with regard to termination of the mandate of the Arbitrator. The judgments do not lay down any principle by which one can conclude that the moment the earlier award is set aside on merits and the reference proceeding afresh lthat the same Arbitrator cannot continue to adjudicate upon the dispute. There is nothing in these judgments which states that the mandate of such an Arbitrator terminates automatically.

8. The whole attempt appears tobe to delay the adjudication of the disputes on some ground or the other. There is substance in the contention of the respondents that this is second time that selfsame grounds have been raised. Even on this occasion,

no case is made out to pass any order much less permanent injunction as prayed. Petition is dismissed.

(S.C.DHARMADHIKARI J.)